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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 265 of 2006
Date of decision: November 17, 2007

Bhim Singh **...Petitioner**

Versus

Smt. Urmila Rani **...Respondent**

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CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

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Present: Mr. Gurdial Singh Jaswal, Advocate with
Ms. Aanchal Thakur, Advocate for the petitioner.

None for the respondent despite service.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order passed by learned Civil Judge (Senior Division), Bhiwani dated December 8, 2005 whereby application moved by the petitioner/plaintiff under Section 33 read with Section 35 of the Indian Stamp Act, 1899 (for short "the Act") for impounding the document Ex. P-1 and payment of stamp duty and penalty thereof was dismissed.

Briefly the facts are that the petitioner/plaintiff filed a suit for recovery of Rs. 8 lacs against the respondent on the plea that respondent/ defendant borrowed a sum of Rs. 8 lacs from the petitioner/plaintiff to be returned within a month without interest. However, in case of failure, the same was to carry interest @ 2% per month after expiry of one month. This according to the petitioner/plaintiff was acknowledged by the respondent by way of writing on the letter pad, the signature whereon are not denied. The document i.e. acknowledgment by the respondent/defendant on the letter pad is already exhibited in the evidence. Considering the difficulty that the

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document in question may not be given due weight at the time of arguments, on account of non payment of stamp duty thereon, the petitioner moved an application under Section 33 read with Section 35 of the Act for permission to pay stamp duty and penalty thereon. The claim sought to be made in the application was that document being an agreement was subject to levy of stamp duty and the same having not been affixed thereon need to be impounded and the petitioner be permitted to pay stamp duty as well as penalty thereon in accordance with law. The application was contested by the respondent with the plea that alleged document is pronote and the same does not fall under the definition of agreement and the deficiency of stamp duty on pronote cannot be made good under Section 35 of the Act.

Learned trial Court while considering the nature of the document and holding the same to be not an agreement but a pronote rejected the prayer made by the petitioner/plaintiff for grant of permission to pay stamp duty thereon.

Learned counsel for the petitioner submitted that approach of the learned trial Court in dealing with the application filed by the petitioner is totally erroneous. While considering the application it was not the stage to record findings as to the nature of the documents, which could be considered only at the final stage of the arguments. By way of application all what the petitioner had prayed for was only liberty to pay the stamp duty and penalty thereof by claiming the document to be an agreement which should not have been denied. Learned counsel for the petitioner had relied upon the judgment of Himachal Pradesh High Court in **Saran Dass and others Vs. Smt. Situ and others AIR 1986 Himachal Pradesh 1**.

Relevant provisions of Sections 33 and 35 of the Act are extracted below:-

> **33. Examination and impounding of instruments.-**
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> (1) Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or

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comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that --

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,-

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

35. Instruments not duly stamped inadmissible in evidence, etc.-

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence , or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

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Provided that:

(a) any such instrument not being an instrument chargeable with a duty not exceeding ten naya paise only, or a bill of exchange or promissory note or acknowledgment or delivery order, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);

(e) nothing herein contained shall prevent the

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> admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act.

Having heard learned counsel for the petitioner and perusing the provisions of the Act as well as judgment cited by her, I am of the view that the approach of the learned trial Court in dealing with the issue is not correct for the simple reason that it was application moved by the petitioner/plaintiff for permitting him to pay the stamp duty and the penalty on the document Ex. P-1 by claiming the same to be an agreement executed between the parties, however, learned trial Court while considering the application merely for payment of stamp duty and penalty thereon has misdirected itself by opining on the nature of document itself, which was not the issue before it at that time as it was merely an application filed by the petitioner/plaintiff for permitting him to pay stamp duty and penalty on the document claiming it to be an agreement. It was merely claim of the petitioner/plaintiff to term the document Ex.P-1 as an agreement. At the stage of consideration of application under Section 33 of the Act the nature of the document, its admissibility and evidentiary value thereof was not required to be gone into. Merely payment of stamp duty and penalty as per claim made by the petitioner/plaintiff would not have entitled him to submit later on that document in question should be termed as agreement because at the stage of consideration of the application for payment of stamp duty and penalty, he was permitted to pay by it by accepting the same to be an agreement. It would only be at the stage of final arguments in the suit that the Court was required to consider the nature of document, its legal effect and the worth thereof for the purpose of decision of the suit.

For the reasons stated above, the petition is allowed. The impugned order passed by learned trial Court is set aside. The petitioner is permitted to pay stamp duty and penalty on the document as requested by him. It is made clear that nature of document, its legal effect and the rights accruing thereon to the parties shall be considered by the learned trial Court

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at the time of final decision of the suit and at that stage, the Court shall not be prejudiced by the findings recorded in the impugned order, which has been set aside.

November 17, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to Reporter)